

TEXAS DEPARTMENT OF PUBLIC SAFETY

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COMMISSION
STEVEN P. MACH, CHAIRMAN
A. CYNTHIA LEON
STEVE H. STODGHILL

RECEIPT FOR HAND DELIVERY

Date: October 7, 2019

To: Office of the Attorney General
Open Records Section

From: Albert DiMarco
Office of General Counsel
Texas Department of Public Safety

RE: Public Information Request for threat assessments, field reports, intelligence updates, emails, and email attachments, which mention the following terms or names:
Atomwaffen (PIR # 19-4161)

Acknowledgement of Delivery:

Name

Date and Time of Delivery:

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October 7, 2019

Via Hand Delivery

Attorney General of Texas
Open Records Division
209 West 14th Street, 6th Floor
Austin, Texas 78701

RE: Public Information Request for threat assessments, field reports, intelligence updates, emails, and email attachments, which mention the following terms or names: Atomwaffen (PIR # 19-4161)

DATE REQUEST FOR INFORMATION RECEIVED:

9/24/2019

DATE REQUEST FOR RULING SUBMITTED TO ATTORNEY GENERAL:

10/7/2019

Dear Open Records Division:

The Department of Public Safety received the above-referenced request for information from Nick Martin on September 24, 2019. We believe some or all of the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code. Enclosed along with this letter is a representative sample of the requested records. Accordingly, we are requesting a ruling regarding the release of these records.

Law Enforcement Sensitive

Section 552.101 of the Government Code states that “[i]nformation is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses section 418.177 of the Government Code, which states:

Information is confidential if the information:

- 1) Is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity.
- 2) Relates to an assessment by or for a governmental entity, or an assessment that is maintained by governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Critical infrastructure is defined as “all public or private assets, systems and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation. Government Code § 421.001 (2).

Furthermore, the Department believes this information is excepted from required public disclosure pursuant to section 552.108(b)(1) of the Government Code, which states:

- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
 - (1) release of the internal record or notation would interfere with law enforcement or prosecution.

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in [a law enforcement agency], avoid detection, jeopardize officer safety, and generally undermine [law enforcement] efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). Your office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (predecessor to section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime maybe excepted).

A portion of the responsive records relate to communications between members of law enforcement concerning publically available news clips, information from public social media accounts, public doxing attempts and public twitter posts. The disclosure of the identity of the communicators, regardless of the subject matter discussed, would provide wrong-doers, terrorists, and other criminals with invaluable information concerning the identity of potential uncover agents, informers and other individuals holding sensitive law enforcement positions. Withholding the identity of these individuals is essential for individual safety and future law enforcement operations.

Regarding the rest of these enclosed records, revealing these records would provide wrong-doers, terrorists, and other criminals with invaluable information concerning law enforcement procedures and intelligence regarding internet-based criminal activity or potential terrorist attacks. Knowing key details about the system will compromise law enforcement purposes by enabling terrorists and criminals to anticipate weakness in law enforcement procedures and alter their methods of operation in order to avoid detection and apprehension. The Department also believes the responsive information relates to tactical plans maintained by the Department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the release and disclosure of the submitted records would reveal law enforcement techniques used to identify potential threats to public safety. These techniques are used to prevent future crimes and protect the welfare and safety of the public. Disclosure of these techniques would provide specific

information that would hamper the ability of law enforcement to respond to current threats and would injure their ability of law enforcement to assess ongoing and future risks to public welfare.

As such, the Department believes that the release of such information would endanger the safety of law enforcement personnel and the public and would injure the ability of law enforcement to make proper assessments about equipment, training and staffing. Therefore, the Department believes that the submitted records are confidential and excepted from required public disclosure in their entirety under sections 552.101, in conjunction with section 418.177, and 522.108(b)(1) of the Government Code.

Please find enclosed the request from Nick Martin, the notice of our request for a ruling sent to the requestor, and the representative records we wish to except from required disclosure. Please feel free to contact me at (512) 424-2890 if you have any questions.

Sincerely,

Albert DiMarco

Albert DiMarco
Assistant General Counsel

Enclosure(s)

cc: Nick Martin
80858-35191215@requests.muckrock.com

\\hqogcs001\ORA\2019 requests\19-4161\19-4161 (19-10-07) letter to AG